

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HEALTH

In the Matter of the License
Application of County Emergency
Medical Services, Fertile,
Minnesota

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at 6:00 p.m., November 20, 1989, at the Fertile Community Center, Fertile, Minnesota, and continued on November 21, 1989. The record on this matter *as closed on January 5, 1990, the date of receipt of the last post-hearing submission.

Steven Belau, Chief Operating Officer, appeared on behalf of County Emergency Medical Services, 10 East Main Street, Fertile, Minnesota 56540 (the Applicant or CEMS). Michael S. Brouse, Michael S. Brouse & Associates, P.A., 308 West Ist Street, Fosston, Minnesota 56542, appeared on behalf of Intervenor Fosston Ambulance Service (FAS). Michael L. Jorgenson, Charlson Marben, P.A., 119 West 2nd Street, Thief River Falls, Minnesota 56701-0506, appeared on behalf of intervenor Whiting Enterprises, Inc. (Whiting Enterprises).

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner of Health shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner of Health. Parties should contact Sister Mary Madonna Ashton, Commissioner of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Whether Applicart has shown by a preponderance of the evidence that its applications to provide scheduled service in an expanded primary service area and to expand its exisiting primary service area to include the City of Erskine should be granted under the standards set forth in Minn. Stat. 182.802, subd. 3(g).

Based upon the -record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

PROCEDURAL HISTORY

1. Applicant is a non-profit corporation based in Fertile, Minnesota, currently licensed to provide advanced ambulance service to a 648 sq. mi. primary service area located in portions of Polk and Norman Counties. On June 8, 1989, Applicant filed an application for additional licensure that consisted of two elements. (1) To provide "specialized" ambulance service in a proposed primary service area in Polk, Norman and Red Lake Counties significantly larger than its existing primary service area, and (2) to expand its current primary service area for advanced ambulance service to include the city of Erskine. Ex. 1 and 1A.

2. The Commissioner of Health issued a Notice of Completed Application and Notice of and Order for Hearing, setting the hearing in this matter for November 20, 1989. On October 9, 1989, the notice was published in the State Register at 14 S.R. 978. Copies of the notice were mailed by the Department of Health to various county boards, ambulance service providers and other organizations that the Department determined might have an interest in the Application. Ex. 4. Copies of an abbreviated notice were published during the week of October 30 and the week of November 6, 1989, in newspapers in Red Lake Falls, Crookston and Ada, Minnesota, the county seats of Red Lake, Polk and Norman Counties. Ex. 5.

3. Petitions to Intervene were received from FAS and Whiting Enterprises. The Petitions were granted by the Administrative Law Judge on November 4, 1989. Ex. 6, 7 and 8. Whiting Enterprises filed a Motion for Continuance of the Hearing to allow it time to file a competing application. Ex. 9. That motion was denied by the Administrative Law Judge at a prehearing conference held November 8, 1989. Ex. 10.

4. Ten persons testified at the hearing, including the witnesses called by the parties. Post hearing written comments were received from approximately fifteen persons or organizations.

BACKGROUND

5. Applicant was formed in August, 1982, to provide emergency medical service for the Fertile area. Because the closest hospital and ambulance was twenty-five miles away, it was decided that the service should be licensed as an advanced life support (ALS) ambulance (Advanced life support service is now referred to as advanced ambulance service by the statutes. The terms ALS and advanced ambulance will be used interchangeably in this report, as will BLS

and basic ambulance.) Applicant was granted its ALS service license in December, 1982, the first non-urban ALS license in the state.

6. Applicant remains the only advanced Ambulance service in Polk, Norman and Red Lake Counties. Polk County Ambulance Service, based in Crookston, and Norman County Ambulance service, based in Ada, both of which are now owned by Whiting Enterprises, are licensed as basic ambulance services, but have variances to carry and use specified advanced life support equipment. Likewise, FAS, based in Fosston, is also licensed as a basic ambulance service and has waivers to carry and use certain advanced life support equipment. In 1985, FAS applied to the Commissioner requesting a

change in licensure from BLS to ALS. That application was denied by the Commissioner on February 21, 1986, in Determination No. LST-86-2-MDH. Ex. 14A. Polk County Ambulance Service also applied in 1985 to upgrade its service from BLS to ALS. That application was denied by the Commissioner on February 25, 1986, in Determination No. LST-86-1-MDH. Ex. 14B. Polk County itself also filed an application in 1985 to provide ALS services based in Crookston and Fosston, which it had proposed to do by contracting with an ambulance provider to deliver the ALS services. That application was denied by the Commissioner on February 28, 1986, in Determination No. LST-86-4-MDH. Ex. 14D. At the same time, Applicant applied to the Commissioner to expand its primary service area to provide ALS service to the Crookston area. That application was denied by the Commissioner on February 26, 1986, in Determination No. LST-86-3-MDH. Ex. 14C. The four applications were actually considered as a group and the Commissioner's determination was based on a recommendation of the Agassiz Health Systems Agency that all four applications be denied. The considerations included the HSA's desire to see a coordinated, coherent system of emergency medical services developed within the area, specifically a coordinated BLS system, and its doubts about the economic viability of providing ALS service over a broad, sparsely populated area. in 1987, Polk County Ambulance Service again applied to upgrade its licensure to ALS. By that time, the HSAs had been eliminated and a recommendation of denial was made by the State Health Planning and Development Agency for the same reasons that the prior denials had been made. Department staff expressed concern over the fragmented EMS system in eastern Polk County and reservations about the ability to support the high cost of an ALS system in any part of that county due to sparse population, low patient volumes in need of ALS, difficulties of maintaining skill and overwhelming costs. The Commissioner concurred with the staff's recommendation and denied the application on September 23, 1987, in Determination No. LST-87-6-MDH. Ex. 14E.

ALS INTERFACILITY TRANSFERS

DESCRIPTION OF THE PROPOSED SERVICE

7. The scheduled service that Applicant proposes is an advanced ambulance interfacility transfer service between or originating at health care units in Fosston, Crookston, Ada, Twin Valley and Red Lake. The health care units referred to include the hospitals, nursing homes and clinics in the area. The transfer service will have to be at the request of a physician and the patient must require advanced life support in the opinion of the physician. The service may be required on either a pre-arranged or immediate response basis. Applicant suggests that while addition of this service does not address a region-wide emergency medical service system, it would provide a cost-effective alternative to full-time advanced ambulance service in the service area proposed. Ex. 18. Since being licensed, Applicant has been called on to perform advanced life support transfers, particularly from the hospitals in Crookston and Ada. Applicant has been performing these services on an occasional basis in the past, but now receives requests for the transfer service regularly and believes that its primary service area must be expanded

so that it will not be operating in violation of the rule prohibiting regular provision of services outside of approved primary service areas. Minn. RH!: 4690.3500. subp. 1. Ex. 18.

8. Intervenors object to the Application for the transfer services and for advanced ambulance services in Erskine on the grounds that the additional

services are not needed and would result in deleterious effects upon the public health from duplication of existing available ambulance services. The deleterious effect noted is that the negative financial impact from lost revenues that expanded services by Applicant would cause for FAS, Norman County Ambulance Service and Polk County Ambulance Service would cause their demise, or at least, require that they be paid additional subsidies.

RELATIONSHIP TO COMMUNITY HEALTH PLAN

9. The 1988-1989 Community Health Services Biennial Plan for Polk County contains a provision regarding emergency medical services in the county. Ex. 11. It notes that it is a large rural county with an irregular shape with about 65% of its residents living within corporate limits of its fifteen cities and that the low population density, long traveled distances required and the high cost factor of ambulance service make decisions regarding ambulance service difficult and delicate. Polk County has a larger percent of older residents than the state in general and because the elderly are the greatest user of ambulance services and payments from Medicare have been reduced, ambulance services have realized a financial burden from decreases of income. The County is divided into subordinate ambulance service districts having their own taxing power.

10. The overall goal stated by the Polk County plan adopts the State goal of ensuring that every resident in Polk County who experiences an out-of-hospital life threatening emergency will be served by a coordinated emergency medical service system in as short a response time as possible. Among the objectives set to obtain that goal is maintaining and improving the level of services provided by the ambulance services in Polk County. Other objectives include improving the level of education and training in fire departments for emergency medical techniques and education of the public as to CPR, first-aid and available emergency care.

11. The 1990-1991 Community Health Services Plan Update for the Multi-County Board of Health that includes Norman County also addresses medical emergencies. Ex. 38. It notes that the two basic requirements for

effective responses to medical emergencies are response time and training levels. A fast response in the rural area is of little value if the responders cannot maintain an airway, assure breathing and manage a vital circulation in the patient. Similarly, a highly trained and well-equipped advanced life support team is of critical value only if it can reach the scene of a life-threatening emergency within a few minutes of a critical emergency. Equally essential to the effectiveness of these two elements is the ability of the public to know when and how to request an emergency response.

12. The goal adopted by the Plan affecting Norman County is also to ensure that residents who experience out-of-hospital acute life-threatening emergencies be served by coordinated emergency medical services system. The stated objectives toward that goal include continued support of regional EMS projects and increased training of persons in the community to recognize the onset of life-threatening emergencies, respond appropriately and gain access to emergency medical services.

13. The 1988-1989 Quin County Community Health Services Plan, which covers five counties including Red Lake County, also contains a provision on emergency medical services. Ex. 13. It adopts the same goal as the other

plans and also adopts a goal of reducing to the extent possible the incidents of morbidity and mortality due to accidental causes. Its objectives are similar to the other plans.

14. Since the Commissioner's denials of the license applications in 1986 and 1987, there has been no significant movement toward a coordinated EMS system in Polk County alone or together with Red Lake and Norman Counties.

15. As demonstrated by the acrimonious testimony and written comments in this matter, there is a great deal of animosity between Applicant and the Intervenor and differences in perceptions of the quality of the emergency services they provide. Applicant is regarded as providing extremely high quality service and educational programs and is aggressive about improving emergency medical service in Polk, Red Lake and Norman Counties. Bruce Ring, a physician with the Northwestern Clinic in Crookston, said that he considered Applicant to be the most highly qualified ambulance service in the area and that he needed the option to call on them when he judged it necessary in transferring a patient to a more specialized hospital. Ex. 45. Paul Havens, a physician in Fosston, appearing on behalf of FAS, testified that it was physicians who were uncomfortable with their own diagnosis that would call an advanced ambulance rather than a basic ambulance service for transport. Another example of the acrimony in this proceeding was the Memorandum submitted by FAS which concluded by suggesting that Mr. Belau's personal security and self-aggrandizement were the driving forces behind the Application. Ex. 53.

16. Applicant notes that the region has concentrated its efforts at assuring adequate basic ambulance service to all areas of the region. It states that its proposal is consistent with a regional plan for transfer of critically ill or transferred patients from primary and secondary health care units to tertiary care facilities and that the new service would facilitate adequate and appropriate medical care and control during the transfer of patients between health care facilities.

17. Applicant states that its proposal is consistent with the Red Lake County goal of ensuring service by a coordinated emergency medical services system in that it would permit the development of an early defibrillation program in the Red Lake Falls and Oklee ambulance services. Applicant states that both communities have interested and dedicated volunteers capable of carrying out a program similar to the one Applicant established in Mentor with a first responder group. Through the first responder system, the local community ambulance could provide immediate care until meeting the advanced ambulance transfer team who could then provide additional interventions during transport to the hospital. Applicant also states that a coordinated emergency

medical service system throughout the area would include the availability of a mechanism to provide for interfacility transfer of patients requiring specialized services, which is what they are proposing in this Application.

COMMENTS OF GOVERNING BODIES AND PUBLIC OFFICIALS

18. Applicant did not solicit any recommendations or comments from the county boards or municipalities in the area regarding the proposed transfer service. Applicant did so in reliance on the Commissioner's Determination No.

LST-85-5-MDH. dated April 3, 1985. granting a proposed change in the licensure

schedule of BioMedical Research Associates, Inc. In that case, the BMRA did

not submit comments or recommendations from local governments asserting that because it served a highly specialized interfacility transfer market, the "consumer" was the hospital and physician rather than the general public as represented by the local governments. Ex. 40. Similarly in this case, the

Applicant states that the service is intended as an option to physicians for their patients and that because of the very specific patient population served, no recommendations or comments of the governing bodies were solicited. Ex. 1, 18 and 48.

19. The chair of the Norman County Board of Commissioners testified at the hearing that his board had passed a resolution in opposition to the application. He noted that one doctor in Ada was responsible for all the calls for transfer service to Applicant that had been initiated from the county. He stated that they did not want two licensed operators in their small county and really didn't want to get into competition. He was of the view that granting the Application would split Norman County north and south and that that should not be allowed.

20. Red Lake County Sheriff Allan L. Morken testified at the hearing and submitted written comments. Ex. 34. He was concerned that the local ambulance services not be hurt. The Red Lake Falls and Oklee Ambulance Services, both basic ambulance services, serve the county very well. Sheriff Morken thought that both Applicant and the Thief River Falls Ambulance Service were very fine providers of advanced ambulance services, but was not in favor of either of them being licensed in Red Lake County. He would prefer to see mutual aid agreements signed with both services that would take care of whatever need for ALS services exists. He felt that the need for ALS service occurred on a very limited basis and never on a regular basis. He felt that few, if any, transfers from the nursing home in Red Lake Falls to the hospital required ALS service. There is also a clinic in Red Lake Falls.

21. Norman County Sheriff Larry Miller submitted a written comment, Ex. 30, in which he described certain communications problems that currently exist when Applicant is dispatched into the Gary, Minnesota area. That area is in northeastern Norman County, eleven miles south of Fertile and within Applicant's existing primary service area. He apparently would like these problems straightened out.

DELETERIOUS EFFECTS FROM DUPLICATION OF AMBULANCE SERVICES

22. Mr. Belau testified that Applicant made 12 ALS inter facility transfers in the year ending July 31, 1988. From July 1989 through October 1989, Applicant made 21 such transfers, with 16 of them originating in Crookston and 5 in Ada. Nine of the transfers were to hospitals in Fargo or Moorhead and twelve were to United Hospital in Grand Forks. All the transfers from Ada were requested by a Dr. Foderick and a majority of the transfers from Crookston were requested by Dr. Ring (5) and Dr. Ted Olson (5) who is

Applicant's medical director, Ex, 19.

23. There are no other licensed Advanced ambulance service providers within the proposed primary services area, Thus, Applicant suggests there can be no duplication of services. Ex. I And 18. It is possible, however that some physicians will request Applicant's ALS transfer service for some patients who might only require BLS service or, at most. BLS service with variances, that might be available from a closer ambulance service.

24. Applicant suggested that the physician community could develop protocols that would minimize inappropriate utilization. The testimony of Drs. Olson, Ring and Havens at the hearing indicated that they, as community physicians, are very much aware of the services provided by the various ambulance services and are quite capable of making the appropriate medical judgments as to which ambulance service can best respond to the medical needs and time requirements of their patients. The doctors are also well aware of the cost considerations.

25. Whiting Enterprises suggests that Applicant's transfer service will have and already has had a devastating impact on the opposing ambulance services. From July through November of 1988, the Polk County Ambulance Service had had 39 interfacility transfers with a vast majority being from Crookston to United Hospital in Grand Forks. In the judgment of Joseph Prondzinski, the Director of Operations for Whiting Enterprises, a very high percentage of those may have been considered to require ALS level service by a doctor. Ex. 29. From those 39 runs, Polk County Ambulance Service generated \$17,696 in revenue. During the period from July to November 15, 1989, Polk County Ambulance Service has 19 such runs, from which it obtained \$6,809.73 in revenue. Again in 1989, most of the runs originated in Crookston and went to United Hospital, but three originated in Ada on one day and two originated in Neilsville. Ex. 29.

26. Mr. Prondzinski attributed the decrease of 20 runs in the comparable period to Applicant's increase in transfers. At the time of the hearing, Polk County Ambulance Service did not have its variances to use ALS equipment in place. Those variances had lapsed at the time Whiting Enterprises bought the ambulance service. They expected to have them back in place shortly. Mr. Prondzinski was of the opinion that even with the variances back in place, Polk County Ambulance Service's revenues would continue to decrease if Applicant is allowed to continue providing transfers from the Crookston area. He testified that the inevitable result would be the closure of the Polk County Ambulance Service. He also testified that due to the decrease in runs, his fixed cost per run is up. He testified that Polk County Ambulance Service has all the equipment and staff in place for advanced ambulance licensure. Therefore, at the present time, they are incurring all the costs associated with providing advanced ambulance service, but do not have the license to do so. They intend to apply for an advanced ambulance license for their existing primary service area soon. Mr. Prondzinski felt that Polk County Ambulance

Service was currently capable of doing the transfers Applicant proposes to do under this application.

ESTIMATED EFFECT ON THE PUBLIC HEALTH

27. The proposed transfer service will make available a service on a regular basis that is increasingly being requested by area physicians. Dr. Ring testified at the hearing that basic life support is inadequate when it is necessary to transfer patients out of the hospital in Crookkkkkston for very specialized care. In those cases it is used, a registered nurse or doctor must accompany the patient. He testified that a dependable advanced ambulance service is needed at the present time. In his written comment he stated

"Special advanced licensure would allow the physicians at Riverview Hospital more defined authority to ask the most highly qualified ambulance service in our area to transfer our critically ill patients. If the Polk County Ambulance application for advanced ambulance service is approved, it will take months or years to train their personnel and equip their ambulance to achieve the competence that County Emergency Medical Services has demonstrated."

An emergency room nurse at Riverview Hospital and previous member of the Crookston Area Ambulance Advisory Committee also expressed her support for the granting of the license. She referred to the difficulties of using BLS ambulances, noting that even when nurses or doctors accompany patients on such transfers, there is still only so much that can be done without ALS equipment or drugs. She also spoke highly of the quality of the services given by Applicant. Ex. 33.

28. Riverview Healthcare Association, the operator of Riverview Hospital in Crookston, supported the application. They stated that their physicians had used the service in the past to transfer patients to other health care facilities when the patients' condition warranted services greater than those available from a BLS ambulance service. They said the proposed service was necessary to provide for the needs of a small number of their patients. Ex. 20.

29. The Fosston Hospital Association, operator of the Fosston Hospital, opposed the application, saying that they were satisfied with the ability to call on Applicant's service on an as needed basis and saw no need to formally establish an expanded primary service area. They also indicated that they had seldom needed to send nurses or hospital equipment when they used FAS, but did say that it had been necessary to send a nurse along about twice a year over the last three years. Ex. 36.

30. United Hospital of Grand Forks opposed the application in written comments. Ex. 47. Their principal point was that an additional license was not necessary and that Applicant should be allowed to continue providing transportation services as it currently does. They noted that they, too, provide advanced ambulance service that receives requests to provide transportation from hospitals outside of their primary service area. They were of the opinion that there will continue to be very few available ALS services in the area and that those services need to have a strong BLS network to make their systems work.

31. Mahnomen County and Village Hospital stated in their written comment that they would give a negative response to the application if it would in any way affect the ALS air service being provided to them by the air ambulance out of St. Luke's Hospital in Fargo. They have established a positive referral base with St. Luke's Hospital and have spent money building an FAA approved heliport adjacent to their hospital. They felt that granting the license would only duplicate service already available and would not be used by them. Ex. 46. Mahnomen is not within the primary service area proposed by Applicant,

32. Whiting Enterprises argues that granting of the license would be detrimental to the public health in that it would inevitably lead to Applicant acquiring even more of Polk County Ambulance Services' business and the eventual closing of Polk County Ambulance Services' business. This, it is argued, would leave much of Polk County without adequate ambulance service coverage, which is a detriment to the public health. They also argue that it would be detrimental to the public health because it would hinder the chances of success of Polk County Ambulance Services' own application for advanced ambulance licensure. They argue that the public health would be benefitted if advanced ambulance services are available throughout Polk County and that this could only be accomplished if Polk County Ambulance Services' application is successful.

BENEFIT TO PUBLIC HEALTH VERSUS COSTS OF THY PROPOSED SERVICES

33. Applicant offered no specific evidence on costs of the proposed service. Because Applicant is already licensed to provide advanced ambulance service, and because it has been performing the ALS transfer services for some time, there will be no additional costs for new equipment, additional personnel or additional training. If use of the transfer service increases significantly beyond current levels, there would be incremental costs if additional personnel would be required.

34. Applicant suggested that decreasing morbidity by reducing the time patients go without advanced level cares reduces the length and cost of hospitalization and that saving lives increases productive years-of-life from which the benefits exceed the costs. Ex. 18. The view that funding of improvements to ambulance services is an investment rather than an expenditure is supported in an article by officials from the Nebraska Department of Health and University of Nebraska Medical Center. Craren, Ornato and Nelson, The Investment, Journal of Emergency Medical Services, May 1985. Ex. 49.

35. Applicant's base rate is \$700 per run. Ex. 1. For the year ended June 30, 1989, its average invoice amount was \$1305 and its average collected amount was \$517. Belau testimony. Applicant believes its costs per run are generally accepted as reasonable. Dr. Ring testified that applicants rates were reasonable, being somewhat less than the available helicopter ambulance service .

36. Whiting Enterprises argues that there would be increased costs in the form of additional subsidies that would have to be paid by the counties to the competing ambulance services to insure the survival of those services in light of the loss of revenues they would suffer. Ex. 52.

ERSKINE ADVANCED AMBULANCE SERVICE

DESCRIPTION OF PPOPOSED SERVICE

37. Applicant has applied to expand its primary service area to provide

advanced ambulance service within thy corporate limits of Erskine. Erskine is

located on U.S. Highway 2 between Crookston and Fosstor Crookston is 31 miles to the northwest: Fosston is 13 miles to the southeast Fprtile in approximately 25 road miles to the southwest. Ex. I Erskine is presently located within the primary service areas of three basic ambulance services FAS, Polk County Ambulance Service and Red Lake Falls. Ex. 19. The City of

Red Lake Falls is some 27 mile northwest of Erskine.

38. Applicant proposes to offer its service to Erskine residents on a subscription basis. Applicant currently uses a similar system in Winger where the annual cost is \$48 per household per year; it would be somewhat higher in Erskine

RELATIONSHIP TO COMMUNITY HEALTH PLAN

39. See Findings No. 9 and 10 for a description of the Polk County Community Health Plan.

COMMENTS OF GOVERNING BODIES AND PUBLIC OFFICIALS

40. The City of Erskine has been seeking ALS ambulance service for its citizens for several years. In 1985, they supported FAS's application for an ALS license. Ex. 14A. When it appeared that FAS would not or could not obtain such a license, they asked Applicant to apply for a license to provide ALS service to the city. Ex. 14 and 1. The Erskine City Council strongly supports the application. Ex. 1; testimony of Erskine Councilmember Richard Karn. Mr. Karn is a physicians assistant at the Erskine Clinic-

41. Erskine Fire Chief Paul Mahlen expressed the support of the Erskine Fire Department for the proposal. The Erskine Fire Department also serves part of Woodside township, which comes within two miles of Erskine and is within Applicant's existing primary service area, and, so, is aware of the level of service Applicant provides. Ex. 37.

42. Mary Ann and Gerald Olson submitted a written statement supporting the application. Mary Ann is an Erskine Councilmember and Gerald is a volunteer EMT with the Erskine Fire Department. They want the citizens of Erskine to have the opportunity to use Applicant's "extremely skilled staff and well-equipped service." Ex. 32.

43. A letter was received from Rupert Syverson, a Polk County Commissioner from MacIntosh, a city near Fosston. He had been urged by David Hubbard of the Fosston Hospital Association and another employee of the hospital to oppose the Application, primarily because of its financial impact on the Fosston Ambulance Service. Commissioner Syverson noted that the County Board has not and would not take an official position with regard to the Application but, as a private citizen, wished to present certain information. He noted the history of the prior applications that had been denied by the Commissioner upheld and stated that the reasons for the denials remain the same. He suggested that the granting of the license application under the present circumstances would not enhance the provision of pre-hospital emergency medical services in the requested area but would only serve to compound a very complex and intricate problem in the area. Ex. 42. The two Polk County Commissioners from the Crookston area submitted identical letters, leaving out only the reference to the two letters that had been received by Commissioner Syverson. Ex. 43 and 44.

DELETERIOUS EFFECTS FROM DUPLICATION OF AMBULANCE SERVICES

44. James Orser, owner of FAS since 1984 testified that granting the

application would impact on his business to some degree.

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45. FAS provides basic ambulance service, with certain variances to provide and use certain ALS services and equipment, to the Erskine area. There will undoubtedly be some borderline cases where Applicant's ALS service will be requested when FAS could handle the call. This is particularly so because those households that have subscribed to Applicant's service will be predisposed to call Applicant.

46. Mary Ann and Gerald Olson felt that Erskine's citizens could be appropriately trained as to the choices they would have to make and that the Erskine First Responder Unit has appropriate training to make sound judgments as to whether advanced ambulance service is necessary. Ex. 32.

ESTIMATED EFFECT ON THE PUBLIC HEALTH

47. The proposed service would make advanced ambulance service available to the citizens of Erskine that they do not currently have available. Dr. Olson, a physician at Crookston's Riverview Hospital who also works in clinics in Crookston, Fertile and Erskine, testified that ALS is more necessary in rural areas such as Erskine than in metropolitan areas because of the time it takes to get to a hospital to start treatment. Dr. Ring and Mr. Belau agreed in their testimony. Dr. Havens, on the other hand, testified that in rural areas transport time is far more important than the type of ambulance service offered; getting to the hospital is most important. In his opinion, advanced ambulance services are only needed in communities at least the size of Crookston or larger. He felt the basic plus variances ambulance service provided by FAS is adequate in the Fosston area and that there is no need for Applicant's advanced ambulance service in Erskine.

48. Mr. Karn testified that as a physician's assistant in the Erskine clinic and member of the Erskine First Responder unit, he has observed the different level of care that advance ambulance service provides and that making it available to the citizens of Erskine would improve the quality of care in the community.

49. Dr. Ring testified that appropriate dispatch protocols could be developed to assure that the proper type of ambulance service was ordered. He agreed that there are communication problems among the ambulance services in the area and asked for encouragement from the Department of Health to improve communication to improve the overall system. Ex. 45.

BENEFIT TO PUBLIC HEALTH VERSUS COSTS OF THE PROPOSED SERVICES

50. Again, there were no hard cost figures offered by Applicant regarding the costs of extending ALS service to Erskine. Its current cost data experience will be similar in the expanded primary se-vice area because it will be able to avoid startup staffing and equipping costs and will only need to add staff and equipment to cover the additional runs.

51. The officials and citizens of Erskine support the applicant, being aware of the personal cost, want the option to choose the servire nod pay the cost. Nobody from Erskine opposed the application.

Based upon the foregoing findings of fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 144.802. The Notice of Hearing was proper in all respects and all procedural and substantive provisions of law and rule have been complied with by the Department.

2. Minn. Stat. 144.802, subd. 3(g) provides:

The administrative law judge shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 day of receiving notice of the application. In making the recommendations, the administrative law judge shall consider and make written comments as to whether the proposed service, change in base of operations, or expansion in primary service area is needed, based on consideration of the following factors:

- (1) the relationship of the proposed service, change in base of operations or expansion in primary service area to the current community health plan as approved by the commissioner under section 145.918;
- (2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;
- (3) the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;
- (4) the estimated effect of the proposed service, change in base of operation or expansion in primary service area on the public health;
- (5) whether any benefit accruing to the public health would outweigh the costs associated with the proposed service, change in base of operations, or expansion in primary service area.

The administrative law judge shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted

3. The proposed transfer service is consistent with the current community health plans for Polk, Red Lake and Norman Counties.

All the plans have adopted the State goal of ensuring that persons experiencing emergencies outside of hospitals will be served by a coordinated emergency medical system as soon as possible. Polk county has the specific objective of improving the level of services provided by the ambulance services in the country . The transfer service is designed to serve people who

are already under a physician's care in a hospital, clinic or nursing home,so
it is a step beyond the basic stated goal and will be an improvement to the
level of care provided by the ambulance Services in the area

Intervenors have argued strenuously that Applicant has failed to cooperate with them and that this proposal does not provide a coordinated emergency medical system. They argue that nothing has changed since the Commissioner denied the various applications four years ago. Applicant does not have an obligation to develop a coordinated system for the area, but what it does must be part of such a system. And while nothing has changed with regard to ambulance licenses in the area for over four years, it is clear that the demand and need for advanced ambulance service has increased. The requests for the transfer service by area physicians and the increase in the number of ALS transfers made by Applicant over the last two years make that clear.

The proposed transfer service would enhance a coordinated EMS system. It would provide an occasionally needed high level service to supplement the faster responding basic ambulances services that will usually respond to emergencies and get the patients to the hospitals. It would provide a valuable option to the emergency physicians in the area. Appropriate usage through use of dispatch protocols and good physician judgment can be achieved and will assure the coordination of the system.

4. The lack of endorsement by any governing bodies is a negative factor for the transfer service.

The lack of official comment from the Polk County Board probably reflects the divisions that exist among the three ambulance services in the county and the support of the commissioners for their own constituencies. The negative comments of the Chair of the Norman County Board weigh against allowing the proposed transfer service, at least in the Ada area. On the other hand, that opposition seemed to be based on the idea that the transfer service was not needed and that it was just one doctor requesting it. There can be little doubt that, at least on occasion, there is a need for advanced ambulance transfers and that it is appropriate for a physician to make the judgment as to when. Norman County also opposed Applicant's original license application.

S. The public health will not suffer as a result of any duplication of ambulance services by the proposed transfer service.

Duplication of services with the current providers will be minimal, particularly if appropriate selection protocols are developed. At the present time, the other ambulance services provide basic ambulance service, so there should be little duplication. However, there are borderline cases where either type of service might be called and there have been cases where some physicians have called on Applicant because of what they perceived as the higher quality of Applicant's services. To the extent they are correct, such choices enhance the public health by providing a higher level and quality of health care-

The Intervenors will lose some transfers to Applicant with some loss of revenues. Competing ambulance service; have an interest in license proceedings and are properly parties. *Twin Ports Convalescent v. Minn. Bd. Of Health*. 257 N.W.2d 343 (1977). The key factor, however, is not the adveino

impact on the other ambulance services, but the adverse impact on the health care provided to the community. Id at 348: In the Matter of the license Applications of North Ambulance, Hennepin County EMS and HealthOne, Commissioner's Order, No. LST.88.6.MDH (1118/88). The most serious effect in

this case will be on Polk County Ambulance Service out of Crookston. Its transfer run volume is down significantly in the past year and its expenses per run are up. But it had been operating as a basic service without any variances and the physicians knew that. Dr. Ring testified that he would use Polk County when they were able to provide the services he needed. Obtaining variances will help that. If they ultimately receive an advanced license, they will be used more by the Crookston physicians. Also of note is that some of their expenses are due to equipping and staffing for the advanced licensure they don't yet have. It is not appropriate to consider those costs in judging the effect of the proposed license upon them. Similarly, it is not appropriate to consider the business that Polk County will lose if it is granted an advanced ambulance license at some point in the future.

Nonetheless, consideration of this statutory factor requires that the license be fashioned such that duplication is limited to the extent possible while allowing area physicians the option to exercise their medical judgment to select Applicant's services when equivalent services are not available from an ambulance service able to provide more prompt response. While prompt response is not necessarily a requirement in interfacility transfers, it is an appropriate factor to consider here in order to reduce unnecessary duplication of ambulance services in a given area.

6. The proposed transfer service will have a positive effect on the public health.

It will provide advanced ambulance transfer services to areas where it is now regularly needed but not regularly available. Under Minn. Rule 4690.3500, no ambulance service may regularly provide its services within an area other than its primary service area. However, the rule does allow an ambulance service to respond to a request for service anywhere in the State when it can reasonably be expected that it is required by the immediate medical need of an individual and that no other licensed ambulance service is capable of or available for immediate and appropriate response. Applicant made 21 ALS transfers in four months in late 1989. That level of service has become "regular" to the point that Minn. Rule 4690.3500 will be violated if it continues without a change in Applicant's license.

7. The benefits accruing to the public health outweigh the costs associated with the proposed transfer service.

There will be only minimal gross cost increases and little, if any, per run cost increases caused by the proposed service. Applicant is already an advanced ambulance service provider, so there will be no costs to upgrade staff or equipment. Applicant has been providing the service on a limited basis for years, so there will be minimal costs for expanding the service.

8. The proposed transfer service is needed and the application for

scheduled service in the primary service area proposed in Ex. 1A should
the-
granted with the following schedule:

Licensee shall provide advanced ambulance interfacility transfer
service within its primary service area available 24 hours per day
This service shall be limited to:

homes (1) Transfers from hospitals, medical clinics or nursing to hospitals.

medical (2) Patients determined by the physician with primary responsibility for them to be in need of advanced ambulance service not available from another ambulance service able to provide a shorter response time.

This license shall be subject to the following restriction:

scheduled Licensee shall not promote the availability of this service to the public in general, but shall be restricted to promoting it among physicians practicing within its primary service area.

Transfers from other ambulance services or first responder groups are not included because there was no showing that such services are necessary.

9. Expansion of Applicant's primary service area to include the City of Erskine would be consistent with the Polk County Community Health Plan. Making advanced ambulance service available to the citizens of Erskine would be an improved level of ambulance service provided to them.

10. The governing body of the city strongly supports the expansion of the primary service area to include Erskine. Every comment in the record from Erskine residents supported the expansion.

11. The deleterious effects on the public health from any duplication of ambulance services by expansion of the primary services area will be minimal.

FAS is not licensed to provide advanced ambulance service, so any duplication will be in the case of persons selecting Applicant's service when their needs can be served by FAS. Again, this problem can be minimized by adopting appropriate dispatch protocols and by education of the people who subscribe to Applicant's service and the members of Erskine's First Responder unit. FAS is about ten minutes closer to the center of Erskine and that time difference will often be critical. Persons at the hearing supporting the application were knowledgeable about this and other emergency medical system issues and felt that effective educational programs would adequately address those issues.

12. The expansion of the primary service area to include Erskine will enhance the public health because it will make advanced ambulance service available that is not currently available.

Erskine does not have a hospital, the nearest one is in Fosston.
Erskine
does have a clinic, and one of the doctors who practices there (and in the
hospital in Crookston) testified that advanced ambulance service is needed
in
Erskine. A physician who practices at the Fosston Hospital says it is not
Members of the Erskine first Responder unit, having observed the level of
care
advanced services provide, believe it is needed. While it may not be
necessary in a majority of cases, advanced ambulance service will to
required
in many lases. Making it available, therefore, benefits the public health

13. The benefits accruing to the public health outweigh the costs associated with the proposed expansion of Applicant's primary service area to include Erskine.

Expansion of its primary service area will not cause any major expenditure by Applicant that will be passed on to the public. The service will be available to Erskine residents who choose the service on a voluntary basis and agree to pay a subscription fee.

14. The proposed expansion of Applicant's primary service area to include Erskine is needed and should be granted.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Health grant the application for scheduled service with the conditions set forth in Conclusion No. 8 and grant the application for expansion of Applicant's primary service area to include the City of Erskine.

Dated this 5th day of February, 1990.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, not transcribed; Tape Nos. 8159, 8161, 8160, 8165,
8162, 8164.